

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STEEL, PAPER AND FORESTRY
RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION LOCAL 5668
(Constellium Rolled Products Ravenswood, LLC)

and

Case 09-CB-257509

CONSTELLIUM ROLLED PRODUCTS
RAVENSWOOD, LLC

Brendan Keough, Esq., for the General Counsel.

Nathan Kilbert, Esq, *United Steelworkers of America, Pittsburgh, Pennsylvania*),
for the Respondent.

Christopher L. Slaughter and Allison B. Williams, Esqs. (*Steptoe and Johnson, PLLC, Huntington and Bridgeport, West Virginia*) for the Charging Party.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried via Zoom video technology on October 8, 2020. Constellium Rolled Products, LLC filed the charge giving rise to this case on March 4, 2020. The General Counsel issued the complaint on June 4, 2020.

The General Counsel alleges that Respondent Union violated Section 8(b)(3) of the Act in failing and refusing to furnish the Employer with some information requested from it on February 18, 2020 and unreasonably delaying furnishing some of the other information requested at the same time. For the reasons stated below, I find that the Union violated Section 8(b)(3) in failing to timely provide to Constellium all documents the employer requested on February 18, 2020 that it has so far failed to provide. On the other hand, I find that it did not violate the Act in not providing some of the requested information until March 9, 2020.

On the entire record,¹ and after considering the briefs filed by the General Counsel, and Respondent Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Charging Party Employer manufactures aluminum products at its facility in Ravenswood, West Virginia. The United Steelworkers International Union represents employees of the Charging Party. Steelworkers Local 5668 acts as the International Union's agent in contract administration. I find that the Charging Party is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Steelworkers International Union and its Local Union 5668 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Respondent Union has represented a unit of the Charging Party's production and maintenance employees for 50 years or more. Presently that unit consists of approximately 850 employees. The International Union and the Charging Party have had many collective bargaining agreements, including the current one that runs from September 19, 2017 through September 19, 2023. In May 2019, the Respondent Union filed a grievance alleging that Constellium was not abiding by the collective bargaining agreement regarding the out-of-pocket health care expenses of retired unit members under the age of 65, Grievance 19-05-G, Jt. Exh.2. According to the Union these retirees should not have to pay any out of pocket expenses once they have exhausted the \$250 per month health care supplement provided to them by the company.

The grievance relied upon an undated document signed by James R. Guillow, who at one time, including during 2004, was a Vice President for Human Resources at Pechiney Rolled Products, a previous name of the entity that owns the Ravenswood plant. That document's title and bullet points read as follows:

Proposed Retiree Health Care Summary

The benefits under the retiree health care plan are not changed.

The Retiree Health Care Cap applies to those employees who have retired since January 1, 2003 and who retire in the future and are eligible for retiree medical coverage. Employees who retired prior to 2003 are completely unaffected by this cap.

No retiree has to pay anything for health care during the life of the Agreement with the exception of the \$250 per month supplement payable to age 65 that was provided under

¹ While I observed the only witness in this case, I have not relied on his demeanor in making any factual findings. Moreover, this case presents little, if any, in the way of disputed fact.

the terms of 2002 Agreement in order to cover any retiree medical contributions. In other words, retirees pay \$0.

For such retirees receiving this supplement, the retiree who is under the age of 65 will pay no more than \$250 per month once the cap is exceeded. The retiree's spouse and/or other dependent participant do not pay this \$250 per month.²

In addition, it is agreed that this amount will also be made available for those employees who retire on or before May 31, 2010.

Until the cap is exceeded, the retiree can use the supplement as he or she wishes. It is estimated that retirees who receive the supplement will not be required to contribute any part of the \$250 per month until the cap amount is exceeded, which is projected to be in 2008 or 2009.

This issue shall be a mandatory subject of collective bargaining in the next contract.

The Union's grievance was not resolved at step 3 of the grievance process in June 2019. On August 2, 2019 the Union appealed the grievance to step 4, arbitration, which was initially scheduled to be heard by an arbitrator on February 27, 2020.

On February 18, 2020, Constellium made an information request to the Union, to which the Union responded as follows on February 25: The requests and the Union's responses (underlined below) are as follows:

- All documents in the Union's possession or under its control which show or are evidence that the "Pechiney Rolled Products Proposed Retiree Health Care Summary" signed by Jim Guillow ever became a part of any labor agreement or became an agreed upon modification of any existing agreement;

The Union respectfully declines to provide a response on the ground that this request improperly seeks to engage in pre-arbitral discovery.

- All documents in the Union's possession or under its control which show or are evidence that the "Pechiney Rolled Products Proposed Retiree Health Care Summary" signed by Jim Guillow was ever signed or accepted in writing by the Union;

The Union respectfully declines to provide a response on the ground that this request improperly seeks to engage in pre-arbitral discovery.

- All documents in the Union's possession or under its control that relate to the subject of retiree health care costs that are in excess of the cap set forth in the cap letters appended to the 2010, 2012, and 2017 labor agreements being passed on to retirees;

² The parties agree that the last sentence and a half of this bullet point is highlighted, not marked through.

The Union does not possess any documents matching this description. That is the Union does not possess any documents that deal with passing along to Retirees any cost in excess of the Cap Letters appended in the 2010, 2012 and 2017 Labor Agreements.

• All documents in the Union's possession or under its control on which it relies to show that the excess retiree health care costs (meaning those costs in excess of the caps set forth in the cap letters) were ever intended by the Company and Union to limit retiree costs to \$250 per month;

The Union respectfully declines to provide a response on the ground that this request improperly seeks to engage in pre-arbitral discovery.

• A copy of the page or pages of any applicable CBA on which appears the section or sections of the contract that the Union claims is violated with respect to Grievance 19-05-G.

The Union respectfully declines to provide a response on the ground that this request improperly seeks to engage in pre-arbitral discovery.

By responding to this request the Union is not waiving any of its protected statutory rights to respond or not respond to future request made by the Company.

The February 27, 2020 arbitration was postponed for settlement purposes. However, the parties agreed to seek an advisory opinion from the arbitrator. The day after the Arbitrator rendered his advisory opinion, which agreed with the Union in large part, Constellium filed its unfair labor practice charge, which alleges the Union violated the Act in its response to the company's information request.

On March 9, 2020, the Union, pursuant to the Arbitrator's advisory opinion provided to Constellium documents it deemed responsive to the company's third bullet point; This included a series of memos from AON, Constellium's actuarial firm, to Constellium's managers of compensation and benefits. It also included a 2015 letter from Constellium's Director of Labor Relations to a retired unit employee, Jt. Exh. 7. The General Counsel alleges that Respondent Union violated Section 8(b)(3) in unreasonably delaying furnishing this information. With regard to the other requests/bullet points, he alleges a violation for failing and refusing to provide the information.

The Union also identified pages 203 and 204 of the current collective bargaining agreement as being responsive to the company's last bullet point. Pages 203-204 are labelled July 15, 2010 (2017 Negotiations Update) on Retiree Health Care.

Pages 203-204 read as follows:

This letter is to confirm the understanding that we have reached during the 2017 negotiations concerning retiree health care. Accordingly, it was agreed that for employees who have retired since January 1, 2003, (except for those employees that elected to retire

under the early retirement package as part of the 2002 negotiations) and who retire in the future, and are eligible for retiree medical coverage, their retiree medical benefits shall be in accordance with the following:

a. The average annual Company contributions to be paid for all health care benefits per participant who retires on or after January 1, 2003 shall not exceed \$13,007 for participants under the age of 65 and \$5,764 for participants age 65 and older. The age of any such participant or dependents of such participant will be determined as of each January 1 for the entire year.

b. If the average annual cost of health care benefits for each such group described in paragraph "a." above exceeds the specified amount, the cost in excess of that amount shall be allocated evenly to all participants in such group, as an annual individual contribution, payable monthly, beginning the following year.

c. Notwithstanding the foregoing, no participant shall be obligated to contribute for such excess health care costs until January 1, 2011 with the exception of the \$250.00 per month supplement payable to age 65 that was provided under the terms of the 2002 Agreement in order to cover any retiree medical contributions. In addition, it is agreed that this amount will also be made available for those employees who retire on or before the expiration of the new agreement. For such retirees receiving this supplement, the retiree will pay up to \$250.00 per month for the amount in excess of \$13,007 for the retiree, and the retiree's spouse and/or other dependent participant who is or are under the age of 65. It is further agreed that for post-65 retirees, spouses, and dependents, the annual cost of health care will be reduced by the amount received by the Company under Medicare Part D.

d. The average annual cost for the pre-Medicare hourly capped group shall be determined by taking the total annual health care payments paid by the Company for the pre-Medicare hourly group [including both capped (employees who retired after January 1, 2003 who did not participate in the early retirement window in the 2002 negotiations) and uncapped hourly retirees (employees who retired prior to January 1, 2003 and those who participated in the early retirement window in the 2002 negotiations), but not salaried retirees] in the year, and dividing by the number of adults (including pre-Medicare hourly retirees and spouses, but not dependent children) in the pre-Medicare hourly group as of January 1 of the same year. The average annual cost for the Medicare-eligible hourly capped group shall be determined by taking the total annual health care payments paid by the Company for the Medicare eligible hourly group [including both capped (employees who retired after January 1, 2003 who did not participate in the early retirement window in the 2002 negotiations) and uncapped hourly retirees (employees who retired prior to January 1, 2003 and those who participated in the early retirement window in the 2002 negotiations), but not salaried retirees] in the year, and dividing by the number of adults (including Medicare hourly retirees and spouses, but not dependent children) in the Medicare-eligible hourly group as of January 1 of the same year. This determination will be done using appropriate actuarial methods, and may be subject to full review by actuaries appointed by the union.

e. Upon request of either party, it is agreed that the parties will meet during the term of this Agreement to review the amount of the maximum average annual Company contribution for health care benefits as described in paragraph “a” above. It is further agreed that this issue shall be considered a mandatory subject of collective bargaining in any subsequent contract negotiations.

f. Continued and amended for future retirees on August 1, 2017 as follows: for employees who retire after August 1, 2017 that \$250/month supplement referred to in paragraph “c” will be increased to \$310/month. All other terms of the letter are applicable and remain unchanged.

Analysis

Relevant case law

In *California Nurses Association*, 326 NLRB 1362 (1998) the Board found that a Respondent Union did not violate Section 8(b)(3) in refusing to provide an employer the names of witnesses it intended to call, and the evidence on which it intended to rely in an arbitration proceeding. The Board stated that it was well settled that there is no general right to pretrial discovery in arbitration proceedings.

On the other hand, the Board has made it clear that the duty to supply information extends to a request for material to prepare a grievance for arbitration, *Chesapeake and Potomac Telephone Company*, 259 NLRB 225, 227 (1981) enf'd. 687 F. 2d 633 (2d Cir. 1982).

In *Ormet Aluminum Products*, 335 NLRB 788, 789-90 (2001) the Board found that the employer violated Section 8(a)(5) in refusing to provide information relevant to a grievance that had been referred to arbitration. While the Board noted that the Union had made its request before the grievances had been denied at step 3 and referred to arbitration, the Board also indicated that it would be wrong to make the arbitration procedure a “safe harbor” for information that would otherwise have to be furnished.

In *Oncor Electric Delivery Co.*, 364 NLRB No. 58 slip opinion 1 and 21-22 (2016), the Board affirmed the Judge who found that a party is required to produce facts and documents relevant to an arbitration but not the names of witnesses it plans to call at arbitration or the evidence it plans to rely on.³ The Judge opined that what a party need not produce pursuant to an information request is information that delves into the opposing party’s strategy and preparation for litigating the arbitration.

In summary, I find that the state of Board law on this issue to be as follows. A party is generally not excused from its duty to provide relevant information simply

³ The same standards apply to an employer under Section 8(a)(5) and a Union under Section 8(b)(3) with respect to providing information requested by the other, *Firemen & Oilers Local 288 (Diversity Wyandotte)*, 302 NLRB 1008, 1009 (1991); *Service Employees Local 144 (Jamaica Hospital)*, 297 NLRB 1001, 1003 (1990); *Plasters Local 346 (Brawner Plastering)*, 273 NLRB 1143, 1144 (1984).

because an arbitration is pending. A party is not required to produce information which would divulge the identity of witnesses it intends to call at an arbitration proceeding or produce or identify the documents it intends to introduce at the arbitration. However, regardless of what the party's intentions are, or trial strategy may be, it is required to produce documents that would otherwise assist the requesting party in preparing for arbitration—regardless of whether it may introduce these documents as part of its case. In other words, the fact that a party may introduce a document as evidence in an arbitration does not excuse it from failing to provide it to the other party when requested to prepare the other party's case before the arbitrator.

Conclusion of Law

As a result of the foregoing, I find that the Union violated Section 8(b)(3) in failing to timely provide to Constellium all documents the employer requested on February 18, 2020 and that it has so far failed to provide. On the other hand, I find a delay of less than 2 weeks in providing the information it did produce did not violate the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. To wit, Respondent Union shall furnish to Constellium Rolled Products, LLC the information it requested on February 18, 2020.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, The United Steelworkers of America International Union and its Local Union 5668, its officers, agents, and representatives, shall

1. Cease and desist from
 - (a) Refusing to bargain collectively with Constellium Rolled Products by failing and refusing to furnish it with requested information that is relevant and necessary for the employer's rights and obligations in collective bargaining.
 - (b) In any like or related manner failing and refusing to bargain in good faith with Constellium Rolled Products.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Furnish to Constellium Rolled Products, LLC in a timely manner the information requested on February 18, 2020.

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- (b) Within 14 days after service by the Region, post at its offices copies of the attached notice marked Appendix. Copies of the notice on forms provided by the Regional Director for Region 9 after being signed by the Respondent's authorized representative shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to bargaining unit members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with bargaining unit members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If Constellium has gone out of business or closed the facility involved in these proceedings, or if the Union has ceased to represent Constellium employees at Ravenswood, the Respondent Union shall duplicate and mail, at its own expense, a copy of the notice to all current bargaining unit members and former members employed by Constellium Rolled Products at any time since February 18, 2020.
- (c) Sign and return to the Regional Director sufficient copies of the notice for physical and/or electronic posting by Constellium Rolled Products, if willing, at all places or in the same manner as notices to employees are customarily posted.
- (d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 23, 2020.



Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to provide Constellium Rolled Products with relevant information that it requests us to provide to it for purposes of collective bargaining including preparing for an arbitration.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide Constellium Rolled Products with the information it requested from us on February 18, 2020 regarding agreements with us regarding employee out of pocket health care costs.

UNITED STEEL, PAPER AND FORESTRY
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION LOCAL
5668 (Constellium Rolled Products Ravenswood,
LLC)

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

550 Main Street, Federal Building, Room 3003, Cincinnati, OH 45202-3271
(513) 684-3686, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/09-CB-257509 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (513) 684-3750.